

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Andrea Masley

AFFIRMATION IN SUPPORT

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 E

Hon. Andrea Masley

MARK F. HAMILTON, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the truth of the following statements under penalty of perjury:

1. I am a partner of the law firm Kennedys CMK LLP, attorneys for Defendants, TIG Insurance Company, The North River Insurance Company, and the United States Fire Insurance Company (collectively, "TIG"), in the above consolidated matters (the "Insurance Coverage Actions"). As such, I have personal knowledge of the facts and circumstances contained herein, the source of my knowledge being the records and files maintained by my office in the ordinary course of handling this matter.

2. This affirmation is submitted in support of the instant application made by way of an Order to Show Cause seeking Orders, pursuant to CPLR §§ 3108, 3111, and 3120 directing the issuance of an Open Commission to the Courts of the respective states of non-party witnesses New England Patriots, LLC, Buccaneers Limited Partnership, Miami Dolphins, Ltd., Jacksonville Jaguars, LLC, Kansas City Chiefs Football Club, Inc., Dallas Cowboys Football Club, Ltd., and Houston Holdings, LP d/b/a Houston Texans (collectively the “NFL Teams”), and upon the opening of such commissions, requesting that the appropriate authority in each respective State issue a subpoena *duces tecum* on the applicable NFL Team.

A. FACTUAL BACKGROUND

3. The parties to the Insurance Coverage Actions are seeking various declaratory judgments regarding their respective rights and obligations under certain insurance policies related to various claims asserted against the National Football League (“NFL”) and NFL Properties LLC (“NFLP”) encompassed within the Multi-District Litigation captioned In Re National Football League Players’ Concussion Injury Litigation, MDL No. 2323, venued in the United States District Court for the Eastern District of Pennsylvania before the Honorable Anita Brody (the “MDL Action”).

4. The NFL and NFLP have filed Counterclaims and Cross-Claims against TIG in the Insurance Coverage Actions to recover substantial defense and indemnity payments made or to be made in connection with the MDL Action and as a result of the settlement of that action.

5. The NFL is comprised of thirty-two (32) individual member clubs.

6. The individual member clubs for which all of the underlying claimants relevant to the MDL Action played and which make up the NFL likely possesses relevant documents

and communications or other tangible information relevant to issues in the Insurance Coverage Actions and/or the MDL Action.

7. Twenty-five (25) out of the thirty-two (32) individual members clubs have been served with individual subpoenas in the Insurance Coverage Actions pursuant to the Uniform Interstate Depositions and Discovery Act (“UIDDA”) as adopted in each such club’s respective home state or to the extent domiciled within the state of New York.

8. The NFL Teams account for the remaining seven out of the thirty-two (32) individual member clubs which are not domiciled in New York or in states that have adopted the UIDDA and which, therefore, have not been served with an individual subpoena in the Insurance Coverage Actions.

9. Pursuant to Discovery Rule 7 of the Part 48 Rules specifically regarding Commissions, TIG conferred with all parties to these actions seeking to obtain a stipulation as to the issuance of the sought-after Open Commissions. All of the insurer parties were prepared to enter into such a stipulation¹, but the NFL and NFLP would not agree to enter into such a stipulation.

10. Accordingly, pursuant to Discovery Rule 7 of the Part 48 Rules, TIG is compelled to seek judicial intervention to assist in proceeding with the discovery that is the subject of the Order to Show Cause which this Affirmation supports.

¹ To the extent that Chartis Specialty Insurance Company, Chartis Property Casualty Company, Illinois National Insurance Company, and National Union Fire Insurance Company of Pittsburgh, Pa., and Alterra America Insurance Company have reached settlements in principle with the NFL Parties and remain as parties’ to this action in name only pending forthcoming Stipulations of Dismissal, these entities were not consulted in connection with this issue.

B. COMMISSION FOR SERVICE OF JUDICIAL SUBPOENAS UPON NON-PARTY NFL TEAMS

11. Based on the foregoing, TIG seeks commissions to serve judicial subpoenas upon the non-party NFL Teams. Specifically, CPLR § 3101(a) requires “full disclosure of all evidence material and necessary in the prosecution or defense of an action regardless of the burden of proof.” The words material and necessary are to be interpreted liberally, requiring disclosure of “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason.” Allen v Crowell-Collier Publ. Co., 21 N.Y.2d 403, 406, 288 N.Y.S.2d 449 [1968]. Stated differently, the disclosure sought need only be “relevant to the prosecution or defense of an action.” Matter of Kapon v. Koch, 23 N.Y.3d 32, 38, 988 N.Y.S.2d 559 [2014].

12. The last known address for New England Patriots, LLC, is One Patriot Place, Foxboro, Massachusetts 02035-1388.

13. The last known address for Buccaneers Limited Partnership is One Buccaneer Place, Tampa, Florida 33607.

14. The last known address for Miami Dolphins, Ltd., is 347 Don Shula Drive, Miami Gardens, Florida 33056.

15. The last known address for Jacksonville Jaguars, LLC, is One Everbank Field Drive, Jacksonville, Florida 32202.

16. The last known address for Kansas City Chiefs Football Club, Inc. is 1 Arrowhead Drive, Kansas City, Missouri 64129.

17. The last known address for Dallas Cowboys Football Club, Ltd. is 1 Cowboys Way Suite 100 Frisco, Texas 75034.

18. The last known address for Houston Holdings, LP is Two NRG Park, Houston, Texas 77054-1573.

19. TIG intends in good faith to request material and necessary documents in the possession of the NFL Teams so as to properly prepare its defense in this matter.

20. No prior application has been made for the relief sought herein.

21. Wherefore, TIG respectfully requests that this Court issue the proposed Orders attached to the Stipulation submitted herewith directing the issuance of an Open Commission to the Courts of each NFL Team's respective State and, upon the opening of said commissions, requesting that the appropriate authority in each respective State issue a subpoena *duces tecum* on the appropriate NFL Team.

22. Attached hereto as **Exhibit A** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the Commonwealth of Massachusetts requesting the issuance of a subpoena *duces tecum* to New England Patriots, LLC; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to New England Patriots, LLC, and (3) a proposed subpoena to be served on New England Patriots, LLC.

23. Attached hereto as **Exhibit B** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Florida requesting the issuance of a subpoena *duces tecum* to Miami Dolphins, Ltd.; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to Miami Dolphins, Ltd.; and (3) a proposed subpoena to be served on Miami Dolphins, Ltd.

24. Attached hereto as **Exhibit C** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Florida requesting the issuance of a subpoena *duces tecum* to Jacksonville Jaguars, LLC; (2) the proposed commission requesting the issuance

of a subpoena *duces tecum* to Jacksonville Jaguars, LLC, and; (3) a proposed subpoena to be served on Jacksonville Jaguars, LLC.

25. Attached hereto as **Exhibit D** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Florida requesting the issuance of a subpoena *duces tecum* to Buccaneers Limited Partnership; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to Buccaneers Limited Partnership, and (3) a proposed subpoena to be served on Buccaneers Limited Partnership.

26. Attached hereto as **Exhibit E** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Missouri requesting the issuance of a subpoena *duces tecum* to Kansas City Chiefs Football Club, Inc.; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to Kansas City Chiefs Football Club, Inc., and; (3) a proposed subpoena to be served on Kansas City Chiefs Football Club, Inc.

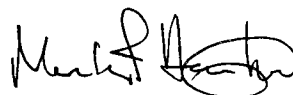
27. Attached hereto as **Exhibit F** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Texas requesting the issuance of a subpoena *duces tecum* to Dallas Cowboys Football Club, Ltd.; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to Dallas Cowboys Football Club, Ltd., and; (3) a proposed subpoena to be served on Dallas Cowboys Football Club, Ltd.

28. Attached hereto as **Exhibit G** is: (1) the proposed order directing the issuance of an Open Commission to the Courts of the State of Texas requesting the issuance of a subpoena *duces tecum* to Houston Holdings, LP d/b/a Houston Texans; (2) the proposed commission requesting the issuance of a subpoena *duces tecum* to Houston Holdings, LP d/b/a Houston Texans, and; (3) (3) a proposed subpoena to be served on to Houston Holdings, LP d/b/a Houston Texans.

WHEREFORE, it is respectfully requested that this Honorable Court grant the application of Defendants, TIG Insurance Company, The North River Insurance Company, and the United States Fire Insurance Company, by way of an Order to Show Cause, along with such other and further relief that this Court deems fair, just and equitable.

Dated: October 27, 2017
New York, New York

By:



Mark F. Hamilton, Esq.